WP(C) 271/2003
BEFORE
HON'BLR MR JUSTICE AMITAVA ROY

JUDGEMENT AND ORDER(ORAL)

The complaint is against non implementation of the directions of this Court contained in the judgment and order dated 13.11.1998 passed in Writ Appeal No.474/1997 in their letter and spirit vis a vis the members of the petitioner association and the decision to withhold the preparation of their pay bills as conveyed by the impugned memo dated 11.2.2002. This Court by order dated 10.1.2003 while issuing Rule had, in the interim, stayed the operation of the order dated 11.2.2002 qua the members of the petitioner association directing the respondent authorities to disburse their arrear and current salary. It is submitted at the Bar that the interim order has since been complied with.

2. I have heard Mr PK Goswami, Senior Advocate for the petitioners, Mr M R Pathak, learned Standing counsel, Education Department and Mr D.Saikia, learned Standing counsel, Finance Department, for the respondents.

3. The petitioner association is one of the teachers in Middle English schools and Middle English Madrassas of the State who had been excluded from the process of regularization at the time of provincialisation of their respective institutions during the year 1991-92 initiated by the state authorities. The cause of its members was earlier pursued by another body nomenclature as All Assam Middle English Schools Teachers Association. According to the petitioners, the teachers whose names appear in the list(Annexue-5 to the writ petition) are the members of the petitioner association and their claims were duly adjudicated in Civil Rule No.2833/1997 and Writ Appeal No.474/1997 espoused by the earlier body i.e. All Assam Middle English Schools Teachers Association, Guwahati.

4. The petitioners have asserted that during the pendency of the aforementioned appeal, the process for regularization of 1123 dropped Assistant teachers of ME and ME Madrassas was initiated and official correspondences to the said effect were exchanged. As a matter of fact, the letter dated 9.11.1998 to the above effect was produced before this Court and it was submitted on behalf of the State respondents that steps had been taken to regularize 1123 Assistant teachers who had been dropped at the time of provincialisation of their institutions during 1991-1992. This Court in view of the above, disposed of the writ appeal with a direction to the respondent authorities to complete the process of regularization of the said dropped teachers within a period of three months. Subsequent thereto, in different phases 1074 of such teachers out of 1123 were regularized. While doing so, however, the members of the petitioner association involved in the instant proceeding were appointed against 4040 posts earmarked under Central Govt. sponsored scheme titled Operation Black Board . The communication dated 24.4.1998 identifying such posts however, mentioned that those would be abolished after the 9th plan period whereafter the incumbents thereto would be absorbed/adjusted against existing vacancies.

The members of the petitioner association though appointed as such, continued beyond the ex;piry of the scheme period i.e. 28.2.2002. While the matter rested at that, by the impugned communication dated 11.2.2002 the Principal Secretary to the Govt.of Assam ,Education Department intimated his counter part in the Education(Elementary) Department, Dispur that the Finance Department had concurred for creation of 4040 posts of Assistant teachers in upper primary schools under 'Operation Black Board scheme' on the condition that as the Government of India would not reimburse any expenditure after the end of 9th plan all the incumbents against those posts would be adjusted/absorbed in the existing vacancies in the terminal year of the said plan and those posts would be abolished thereafter. It was however, mentioned that out of 4040 posts the Finance department had agreed to retain 2378 posts only upto 28.2.2001 and the proposal for retention beyond that date was yet to be received. The ban imposed by the Govt. of Assam on fresh recruitment of teachers was also indicated and the Director of Accounts and Treasury, Assam was asked to instruct all Treasury Officers not

to pass the pay bills of the teachers appointed under the 'Operation Black Board scheme' after 31.3.2002 unless they were adjusted/absorbed against the existing vacancies. Being apprehensive that the above move, is a prelude to their eventual non regularization in service though directed by this Court in Writ Appeal No.474/1997, the petitioners seek appropriate redress.

5. No counter has been filed by the authorities of the Education Department. In his affidavit, the Joint Secretary to the Govt.of Assam in Finance(EC-III) Department has in substance, pleaded that 4040 posts of Assistant teachers were created under the centrally sponsored scheme , Operation Black Board during 9th plan and the salary of the teachers appointed thereunder was reimbursed. It has been confirmed that the Government of India has decided to continue with the scheme for 10th plan period too through Sarba Sikha Abhijan with the expenditure sharing at the ratio of 25:75 between the Govt.of Assam and the Govt.of India respectively.

6. Mr Goswami with reference to the order dated 13.11.1998 passed in Writ Appeal No.474/1997 has argued that as the members of the petitioner association were included within the 1123 Assistant teachers whose services were undertaken to be regularised/ provincialised by the state respondents ,they could not in any view of the matter,be subjected to the uncertainties in their service conditions accompanying the posts earmarked under the 'Operation Black Board' scheme and therefore, the impugned communication is to be adjudged non est for them. The learned Senior counsel contended that this Court in the aforementioned Writ Appeal having directed the State respondents to complete the process of regularization/provincialisation of 1123 teachers dropped at the time of provincialization of ME/ME Madrassas during 1991-1992 within a time frame of three months taking note of the conscious decision of the concerned authorities to the said effect, the members of the petitioner association have an unassailable vested right to be regularized/provincialised on the basis thereof and that therefore, the impugned communication ought to be declared wholly ineffectual , null and void so far as the teachers represented by the petitioner association is concerned. The members of the petitioner association in view of the aforementioned order of this Court having been vested with the right to have their services regularized /provincialised with all consequential service benefits, a writ of mandamus to the above effect is warranted, he urged.

7. Mr Pathak while contending that the members of the petitioner association had to be accommodated against the posts then available under the 'Operation Black Board scheme' in order to comply with the directions of this Court within the time allowed , has submitted that 2378 posts under the said scheme had been retained and a proposal had been laid before the Finance Department for regularization of the incumbents of 2173 posts thereof. The learned counsel informed this Court that the remaining 205 posts have since been then regularised. That the proposal as above, is pending with the Finance department has been confirmed by Mr Saikia who has reiterated the central government decision to continue with the scheme under Sarba Sikha Abhijan Mission on 75 (Central Govt.) ; 25(State Govt.) contribution.

8. I have carefully considered the rival submissions. The factual background and the order dated 13.11.1998 in Writ Appeal No.474/1979 are not in dispute. A plain reading of the said order reveals that the issue related to the provincialisation of the members of the petitioner association serving as Assistant teachers in ME and ME Madrassa schools of the State of Assam. The teachers whose cause had been espoused by the petitioner association were 1123 in number. In course of the hearing it having been disclosed to this court that the State government had initiated steps to regularize the service of such teachers. The following operative directions were issued taking note of the contemporaneous official correspondences on the issue :-

In view of the aforesaid developments, we dispose of this appeal with a direction that the process of regularization /provincialisation of 1123 teachers dropped at the time of provincialisation of ME and ME Madrassas during the year 1991-92 would be completed within a period of 3 months from today.

For the purpose of enabling the Government to complete the process of r

egularization/provincialisation, the appellants association will furnish all necessary documents and particulars including names of concerned assistant teachers to the Director of Elementary Education, Assam, within 2 weeks from today. It will be open for the State Government to consider regularization/provincialisation of Assistant teachers dropped at the time of provincialisation of ME and ME Madrassas during the year 1991-92 in addition to 1123 Assistant teachers in case they find genuineness in the claims of such additional assistant teachers.

It would thus be obvious from the above extract that the order was based on the undertaking of the State respondents to regularize/provincialise the services of 1123 teachers, the members of the petitioner association. The State respondents were left at liberty to consider as well the question of regularisation/provincialisation of other Assistant teachers dropped at the time of provincialisation of ME and ME Madrassas during 1991-92 in addition to said 1123 teachers in case their (additional Assistant teachers) claim were found to be genuine. In the face of the premise in which the above order was passed, it was incumbent on the part of the State authorities to regularize/provincialise the services of 1123 Assistant teachers represented by the petitioner association with all consequential benefits due to them in law. Their appointments under the 'Operation Black Board scheme' with the conditions attached thereto cannot be mutilative of their right endowed on them by the order of this Court. The petitioners apparently had no option or say in the matter of their appointment under the aforesaid scheme and cannot thus be said to have waived their rights conferred by the said order. On the other hand, the decision of this Court having remained unquestioned in any higher forum, it has attained finality and the respondent authorities thereunder are obliged to meticulously act in terms thereof and are essentially estopped in law from departing therefrom.

9. In the attending facts and circumstances therefore the inescapable conclusion is that the decision conveyed by the impugned communication dated 12.2.2002 is inapplicable to the members of the petitioner association who were within 1123 teachers directed to be regularised/provincialise by this Court. This communication therefore vis a vis them are hereby adjudged illegal, inoperative ,null and void and is quashed. The respondent authorities are hereby directed to regularize/provincialised the services of 1123 teachers the members of the petitioner association herein against regular sanctioned posts with all consequential service benefits. In view of the above determination, the order dated 10.1.2003 is made absolute.

10. The petition stands allowed in the above terms. No costs.